No. 436. 150

Brf. of Quarles, Smith, Northrup & Tenney for Resp.

Con for pt. of resp

Office Supreme Court U.S.
FILED
MAY 14 1900
JAMES H. McKENNEY
Clerk

Filed May 14, 1900.

# Supreme Court of the United States

UNITED STATES RUBBER COMPANY et al.

vs.

AMERICAN OAK LEATHER COMPANY et al.

No. 436.
Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

## *SUGGESTIONS IN CONNECTION WITH RESPONDENTS' PETITION.*

J. N. Quarles

FREDERICK A. SMITH,
JACOB NEWMAN,
WILLIAM J. MANNING,
GEORGE W. NORTHRUP, JR.,
HORACE KENT TENNEY,
*Counsel for American Oak Leather Co.*

Geo. Hornemih & Co., Printers, Chicago.

IN THE

# Supreme Court of the United States

UNITED STATES RUBBER COMPANY et al.
vs.
AMERICAN OAK LEATHER COMPANY et al.

No. 436.
Certiorari to United States Circuit Court of Appeals for the Seventh Circuit.

## *SUGGESTIONS IN CONNECTION WITH RESPONDENTS' PETITION.*

May It Please the Court:

The accompanying petition is presented for the purpose of obviating the possibility of having this cause—upon a mere question of technical practice—result in a partial and incomplete decision on the questions involved.

The question of practice here presented is (roughly stated) whether when an equity suit is taken to the Court of Appeals by an appeal prosecuted by the defendants and a cross appeal by the complainants, and when this appeal and cross appeal are heard together in the Court of Appeals on the same record, and one judgment is rendered by the Court of Appeals, adjudicating both the appeal and the cross appeal, and the complainants are successful upon their cross appeal, and

the defendants are unsuccessful upon their appeal, and the defendants thereupon bring this record to this court by *certiorari*—whether under these circumstances this court will determine the whole case and consider the assignments of error upon both appeals, or whether in order to have this court consider the assignments of error upon which they were *successful* in the Court of Appeals complainants are required to take some affirmative step in this court for that purpose, and if so, then what action is necessary to that end.

There appears to be no reported decision of the court deciding the exact question, and we find that the members of the bar differ in their views of the proper practice in such a case. The decision in the case of *Hubbard* v. *Todd*, 171 U. S., 494, which is referred to in the petition, was based upon a state of facts different from that which is here presented; still the opinion there makes a general statement that a *certiorari* proceeding will be considered only upon the assignments of error presented by the person who petitioned for the writ of *certiorari*. In that case there was, as here, an appeal and cross-appeal; but *both parties* were *unsuccessful* in the Court of Appeals, as that court affirmed the decision of the lower court. In the case at bar the appeal of the U. S. Rubber Co., L. Candee & Co., and the Bank asking that the decree holding that they must share the fund *pro rata* with the other creditors be reversed, was unsuccessful, and the appeal of the American Oak Leather Company *et al.*, claiming that the Rubber Companies and Bank should be excluded from participation in the fund was successful.

The dissenting opinion of Mr. Justice Brown, in

which he held that the United States Rubber Company and the other preferred creditors should not be excluded from participation in the fund—the question upon which he dissented from the majority of the court—was an opinion rendered with reference to the assignments of error in our cross appeal. Indeed, it was only by our assignments of error that this question was brought into the Court of Appeals at all.

This court also said in the *Hubbard* case that a *certiorari* hearing stood before the Supreme Court as though it where an appeal by the party petitioning for the writ only. If the court by this language meant to say that a *certiorari* proceeding would be considered as an appeal from the decree of the *Circuit Court of Appeals*, then the question would be relieved of some uncertainty, and there would seem to be no necessity for the party who was successful in the Circuit Court of Appeals taking any affirmative action whatever. On the contrary, it would seem that in such a case all that was required of the successful party was to defend against any attack which the other side might make upon the decree of the Circuit Court of Appeals. If, however, this court meant to say that a *certiorari* proceeding stands before this court as though it were an appeal by the petitioning party only from the decree of the *trial court*, then a different question would arise. We have been unable to find any express decision on this subject.

But as different members of the bar differ in their understanding of the proper practice to be followed in a situation such as this, we have thought it prudent to bring the matter to the attention of the court in order

that this court may, if it deems it proper, indicate in advance its opinion of the practice to be pursued and thus obviate the possibility of this mere question of technical practice being the means of preventing a full decision upon all of the most important questions which the record presents. Such a result would be most unfortunate from the standpoint of the American Oak Leather Company *et al.*

If this question should be raised at the hearing, or should be considered by the court of its own motion, and the court should then be of opinion that some prior affirmative action upon our part was necessary, in order to have all of these questions considered, it would be too late to remedy the matter, and substantial and important rights affirmatively sustained—as the case now stands—by the decision of the Court of Appeals, might be lost.

We would respectfully ask that, if the court holds that the record as it stands is sufficient for the presentation and decision of the questions involved in the assignments of error urged by us in the Court of Appeals, it will give some indication to that effect. If, on the other hand, the court holds that the proper practice requires for this purpose some affirmative action, like the making of an order in this case, directing that our assignments of error be considered with the others, that it enter such order or some other order producing the same result. Or, if it should be deemed necessary to go to the extent of issuing a new writ of *certiorari* in our behalf, that an order for that purpose be entered.

As above stated, the appeal and cross-appeal were

heard and decided together in the Court of Appeals on one record and one judgment was rendered disposing of both appeals. A complete transcript of this record, including these proceedings in the Court of Appeals, was filed in this court by the United States Rubber Company *et al.* with their original petition for *certiorari*.

That complete record has since been duly certified in obedience to the writ of *certiorari*, and has been printed. These petitioners have heretofore entered their appearance here as respondents to the petition for *certiorari* filed by the United States Rubber Company *et al.* The court thus has jurisdiction of parties and subject-matter, and is in a position to make all orders necessary to secure a full consideration of all questions.

Respectfully submitted,

FREDERICK A. SMITH,
JACOB NEWMAN,
WILLIAM J. MANNING,
GEORGE W. NORTHRUP, JR.,
HORACE KENT TENNEY,
*Counsel for American Oak Leather Company et al.*